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January 25, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal
Date of Filing: October 18, 2004
Case No.: TIA-0256

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for DOE assistance in filing for state workers' compensation benefits. The OWA referred the application to an independent Physician Panel (the Panel), which determined that the Applicant's illnesses were not related to his work at a DOE facility. The OWA accepted the Panel's determinations, and the Applicant filed an Appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

I. Background

A. The Relevant Statute and Regulations

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. As originally enacted, the Act provided for two programs. Subpart B established a Department of Labor (DOL) program providing federal compensation for certain illnesses. See 20 C.F.R. Part 30. Subpart D established a DOE assistance program for DOE contractor employees filing for state workers' compensation benefits. Under the DOE program, an independent physician panel assessed whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3); 10 C.F.R. Part 852 (the Physician Panel Rule). The OWA was responsible for this program, and its web site provides extensive information concerning the program.

The Physician Panel Rule provided for an appeal process. An applicant could appeal a decision by the OWA not to submit an application to a Physician Panel, a negative determination by a Physician Panel that was accepted by the OWA, and a final decision by the OWA not to accept a Physician Panel determination in favor of an applicant. The instant appeal was filed pursuant to that Section. The Applicant sought review of a negative determination by a Physician Panel that was accepted by the OWA. 10 C.F.R. § 852.18(a)(2).

While the Applicant's appeal was pending, Congress repealed Subpart D. Ronald W. Reagan Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (October 28, 2004). Congress added a new subpart to the Act - Subpart E, which establishes a DOL workers' compensation program for DOE contractor employees. Under Subpart E, all Subpart D claims will be considered as Subpart E claims. OHA continues to process appeals until the DOL commences Subpart E administration.

B. Procedural Background

The Applicant was employed as a chemical, barrier and utility operator at the DOE's Oak Ridge Plant (the plant). He worked at the plant for approximately twenty-four years, from January 1973 to September 1997.

The Applicant filed an application with the OWA, requesting physician panel review of beryllium sensitivity, simple partial seizures and hypertension. The Panel issued a positive determination for beryllium sensitivity and negative determinations for seizures and hypertension. The OWA accepted the Panel's determinations. The Applicant filed the instant appeal challenging the negative determinations.

II. Analysis

Under the Physician Panel Rule, independent physicians rendered an opinion whether a claimed illness was related to exposure to toxic substances during employment at a DOE facility. The Rule required that the Panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at the DOE site, and state the basis for that finding. 10 C.F.R. § 852.12.

The Applicant disagrees with the Panel's negative determination. The Applicant contends that, during the course of his employment at the K-25 site, he was exposed to "virgin wastes, mixed wastes, low level wastes, hazardous wastes, asbestos, polychlorinated biphenyls, [and] radiological hazards including alpha, beta, gamma and neutron radiation."¹ He asserts that these exposures were the cause of his simple partial seizures and hypertension.

The Physician Panel found that the Applicant suffered from partial seizures. However, it concluded that since there was no evidence of chronic lead or acute organophosphate intoxication, the Applicant's condition was not related to workplace exposures at the plant. With respect to his hypertension claim, the Panel examined the Applicant's work history and could find no mention of lead or "any other chemical agent which would cause hypertension via renal toxicity."² Accordingly, the Panel concluded that the Applicant's work at the plant did not cause, aggravate, or contribute to his hypertension.

As the foregoing indicates, the Physician Panel addressed the claimed illnesses, made its determinations, and explained the reasoning for its conclusions. The Applicant's argument that exposure to toxic substances caused his illnesses is merely a disagreement with the Panel's medical judgment; it is not a basis for finding Panel error. Accordingly, the appeal should be denied.

In compliance with Subpart E, these claims will be transferred to the DOL for review. The DOL is in the process of developing procedures for evaluating and issuing decisions on these claims. OHA's denial of these claims does not purport to dispose of or in any way prejudice the Department of Labor's review of the claims under Subpart E.

¹ Applicant's Appeal Letter, at 1.

² Physician Panel Report, at 2.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0256 be, and hereby is, denied.
- (2) The denial pertains only to the DOE claim and not to the DOL's review of this claim under Subpart E.
- (3) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: January 25, 2005